REMARKS/ARGUMENTS

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

The undersigned contacted Examiner Prone on several occasions from November 29, 2005 to and including January 9, 2006 in order to schedule an interview regarding this case. Although the Examiner indicated a willingness to grant an interview, no interview was ultimately scheduled due to unavailability of the Examiner's supervisor. In the event the Examiner still believes a rejection of the claims is proper following consideration of the amendment presented above and the arguments presented hereinbelow, then it is respectfully requested that a personal interview be granted and scheduled in advance of the issuance of any further action in this application.

Claims 1-4, 7-12 and 15-17 are now pending.

The Examiner's PTOL-326 indicated that claims 15 and 16 are objected to. Although these claims are not mentioned in the body of the Examiner's Action, from the PTOL-326 it is understood that claims 15 and 16 contain allowable subject matter and will be allowed if rewritten in independent form. Confirmation of the allowability of claims 15 and 16 in the next Official Communication is solicited.

The specification was objected to because the use of the trademark DACRON®. As required, DACRON® has been capitalized at the two locations where it appears in the specification. The term is already accompanied by generic terminology. Reconsideration and withdrawal of the objection is requested.

Claim 1 was objected to as including a noted informality. Claim 1 has been amended above to correct the informality noted by the Examiner. Claim 1 has not been amended in response to any rejection over the prior art.

Claim 8 was rejected under 35 USC 112, second paragraph. In this regard the Examiner objected to the presence of the tradename DACRON® in claim 8. While it is respectfully submitted that DACRON® is a term that has been used numerous times in claims, apparently without any objection (at least about 264 U.S. patents have issued in the last 30 years that use the term DACRON® in the claims), to advance prosecution, claim 8 has been amended to delete the tradename DACRON® and to refer instead simply to knitted polyester fabric. In view of the foregoing, reconsideration and withdrawal of the rejection of claim 8 is solicited. It is noted that claim 8 was amended solely in response to the Examiner's formal objection and was not amended in response to any rejection over the prior art.

Claim 17 was rejected under 35 USC 102(e) as being anticipated by McDermott. Applicant respectfully traverses this rejection.

Claim 17 is directed to a method of repairing an aneurysmic region of a blood vessel wherein an outer wall structure is delivered to the site of an aneurysmic region and secured, and an inner wall structure is delivered to the site of the aneurysmic region and secured, after which a space between the inner and outer wall structures is filled so that the outer wall structure generally conforms to an interior shape of the aneurysmic region.

McDermott discloses a prosthesis for aneurysm repair. The device is fabricated with pockets or channels and is delivered to the aneurysmic region after which the channels or pockets are filled. Clearly, McDermott teaches only delivering a pre-fabricated device having inner and outer walls. McDermott does not teach delivering an outer wall structure, securing it, and then delivering an inner wall structure. Since the Examiner may have misinterpreted claim 17 as potentially referring to simultaneously delivery of inner and outer wall structures, claim 17 has been revised above to make clear that the inner wall structure is delivered and secured after the outer wall structure has been delivered and secured.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1574 (Fed. Cir. 1986). While other references may be used to interpret an allegedly anticipating reference, anticipation must be found in a single reference. See, e.g., Studiengesellschaft Kohle, G.m.b.H. v. Dart Indus., Inc., 726 F.2d 724, 726-27 (Fed. Cir. 1984). The absence of any element of the claim from the cited reference negates anticipation. See, e.g., Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., Structural Rubber Prods., 749 F.2d at 716-17.

Because McDermott does not teach or suggest the sequential delivery of an outer wall structure and an inner wall structure, it is respectfully submitted that an anticipatory rejection of claim 17 cannot properly be maintained. Reconsideration and withdrawal of this rejection are solicited.

Claims 1-4 and 7-12 were rejected under 35 USC 103(a) as being unpatentable over McDermott in view of Yannas. Applicant respectfully traverses this rejection.

As noted by the Examiner, McDermott discloses an endovascular device having an outer wall and an inner wall that define therebetween chambers for receiving a fluid to cause the device to assume its expanded shape. It is respectfully submitted, however, that the invention otherwise substantially differs from the McDermott teachings.

First, contrary to the Examiner's characterization of McDermott, McDermott does not teach or suggest "at least one stent structure secured to at least one of said inner and/or outer walls **for supporting and securing** the respective wall with respect to the blood vessel" (emphasis added). The Examiner has alleged that McDermott provides a stent structure, referring to Figures 8 and 9. Figures 8 and 9 do not, however, disclose a stent structure for supporting and securing wall(s) of the device with respect to the blood vessel. Figures 8 and 9 depict the insertion of stays into respective pockets to extend along the length of the device for stiffening and straightening the device. Although McDermott says that the stiffening devices "for all practical purposes behave like a stent" this is not correct with respect to the stent structure recited in applicant's claims. Stents may serve a stiffening function but according to the limitations of claim 1, the stent structures are provided for supporting and securing the respective wall with respect to the blood vessel. The stays or stiffening devices provided according to McDermott are provided to hold the device in its length wise extended state. Because there is no circumferential attachment of the stiffening devices to one another, however, they cannot perform the function of securing the wall with respect to the blood vessel as claimed.

It is further respectfully noted that, as acknowledged by the Examiner, McDermott does not teach or suggest forming the inner graft wall from a material that is permeable to blood or has pores defined therethrough "thereby comprising said means for fluid to flow". In this regard, claim 1 not only requires that the inner wall be permeable or have pores defined through it, but further provides that the permeability/pores are the "means for solidifiable fluid to flow to the area between the inner and outer walls". McDermott does not teach or suggest the provision of a permeable or porous inner wall. Rather, as noted by the Examiner, McDermott provides means 38 for a material such as saline, a gel or a hardening or polymerizable liquid to flow to the pockets of the device.

The Examiner cites the secondary reference to Yannas as allegedly teaching an inner layer that is permeable to blood components and concludes that it "would have been obvious" to include such in McDermott because it would allegedly facilitate the hardening of the McDermott filler material. Applicant respectfully challenges the Examiner's suggested modification of McDermott. Indeed, as repeatedly noted by McDermott in the paragraph appearing at column 4, lines 27-56, a concern with injecting a media other than saline is the toxicity of the components before hardening/gelling. No where is it suggested that any of these products should be directly exposed to blood in the patient. Indeed McDermott's teachings clearly underscore that the filler material should be isolated from the blood stream. Considering the disclosure of McDermott, and without the benefit of applicant's disclosure, one skilled in the art would never consider nor find it obvious to make McDermott's inner wall porous to blood because of the risk to the patient if the inflation fluid exits into the patient's blood stream.

It is further respectfully submitted that Yannas does not teach or suggest that a porous inner wall should be provided as a means for a solidifiable fluid to flow to the area between the outer and inner graft walls. In this regard it is respectfully submitted that the Examiner has mischaracterized the disclosure of Yannas. Indeed, although the Examiner has characterized Yannas as teaching an inner layer that is permeable to blood components, what Yannas in fact discloses, e.g., at column 6, is that the conduit should not allow leakage of whole blood and should have a low porosity to ensure bio-replacement at a rate which is not too slow nor too fast, balancing mechanical properties and bio-replacement rate.

Section 103 does not allow the Examiner to engage in picking and choosing from the prior art only to the extent that it will support a holding of obviousness, while excluding parts of the prior art essential to the full appreciation of what the prior art suggests to one of ordinary skill in the art. In re Wesslau, 147 USPQ 391 (CCPA 1975).

Furthermore, Yannas simply discloses a bio-replaceable blood vessel prosthesis. Yannas no where teaches or suggests that his bio-replaceable blood vessel prosthesis would be suitable for bridging an aneurysmic portion of a blood vessel, as disclosed in McDermott. Thus, Yannas relates to an entirely different type of prosthesis than McDermott and one skilled in the art would use the Yannas prosthesis and the McDermott prosthesis in the alternative and in different circumstances. The skilled artisan would not obviously modify McDermott in view of Yannas, because McDermott neither teaches nor desires a bio-absorbable structure and teaches specifically against flow communication between the interior of his device chambers and the patient's blood stream.

As the CAFC has said, obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. ACS Hospital Systems v Montefiore Hospital, 221 USPQ 929, 933 (Fed. Cir. 1984). There must be a suggestion in the art relied upon to use what one reference discloses in or in combination with the disclosure of the other reference or references relied upon by the Examiner. In re Grabiak, 226 USPQ 870, 872 (Fed. Cir. 1986).

For all the reasons advanced above, reconsideration and withdrawal of the Examiner's rejection is solicited.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and an early Notice to that effect is earnestly solicited.

Respectfully submitted,

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